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Fifty-sixth
Legislative Assembly
of North Dakota

Introduced by

    Legislative Council

    (Information Technology Committee)

`FIRST ENGROSSMENT`
`with Senate Amendments`

`ENGROSSED HOUSE BILL NO. 1037`

1   A BILL for an Act to create and enact a new section to chapter 32-12 and a new section to

2   chapter 44-04 of the North Dakota Century Code, relating to the liability of the state for a

3   contract claim resulting from the failure of computers or computer equipment and to year 2000

4   information requests; and to amend and reenact subsection 3 of section 32-12.1-03 and

5   subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to the liability of

6   political subdivisions and the state for a claim resulting from the failure of computers or

7   computer equipment as a result of the year 2000 date change.

8   **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9   **SECTION 1.** A new section to chapter 32-12 of the North Dakota Century Code is

10   created and enacted as follows:

11   **Claims resulting from year 2000 date change computer failures prohibited.** The

12   state is not liable for a claim arising upon contract which is the result of the failure of any

13   computer hardware or software, telecommunications network, or device containing a computer

14   processor to interpret, produce, calculate, generate, or account for a date that is compatible

15   with the year 2000 date change if the state has made a good-faith effort to make the computer

16   hardware or software, telecommunications network, or device containing a computer processor

17   compliant with the year 2000 date change. For the purposes of this section, the state is

18   presumed to have made a good-faith effort to make the computer hardware or software,

19   telecommunications networks, or devices containing a computer processor compliant with the

20   year 2000 date change if it has attempted compliance through independent testing or

21   assurances sought or assurances received from manufacturers or suppliers. For the purposes

22   of this section, computer hardware or software, telecommunications networks or devices

23   containing a computer processor are compliant with the year 2000 date change if:

1   1.   All stored dates or programs contain century recognition, including dates stored in

2   data bases and hardware or internal system dates in devices;

3   2.   The program logic accommodates same century and multicentury formulas and

4   date values; and

5   3.   The year 2000 or any other leap year is correctly treated as a leap year within all

6   program logic.

7   **SECTION 2. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota

8   Century Code is amended and reenacted as follows:

9   3.   A political subdivision is not liable for any claim based upon an act or omission of

10   an a political subdivision employee of a political subdivision, exercising due care,

11   in the execution of a valid or invalid statute or regulation, whether or not such

12   statute or regulation be valid, or based upon the exercise or performance,

13   exercising due care, or the failure to exercise or perform a discretionary function or

14   duty on the part of a political subdivision or its employees, whether or not the

15   discretion involved be is abused. Specifically, a political subdivision or an a

16   political subdivision employee thereof is not liable for any claim that results from:

17   a.   The decision to undertake or the refusal to undertake any legislative or

18   quasi-legislative act, including the decision to adopt or the refusal to adopt

19   any statute, charter, ordinance, order, regulation, resolution, or resolve.

20   b.   The decision to undertake or the refusal to undertake any judicial or

21   quasi-judicial act, including the decision to grant, to grant with conditions, to

22   refuse to grant, or to revoke any license, permit, order, or other administrative

23   approval or denial.

24   c.   The decision to perform or the refusal to exercise or perform a discretionary

25   function or duty, whether or not such discretion be is abused and whether or

26   not the statute, charter, ordinance, order, resolution, regulation, or resolve

27   under which the discretionary function or duty is performed is valid or invalid.

28   d.   The failure to provide or maintain sufficient personnel, equipment, or other fire

29   protection facilities; or doing any fire extinguishment or fire prevention work,

30   rescue, resuscitation, or first aid; or any other official acts within the scope of

1   official duties; provided, however, this ~~subsection~~ <u>subdivision</u> does not

2   provide immunity for damages resulting from acts of gross negligence.

3   <u>e.</u>   <u>The failure of any computer hardware or software, telecommunications</u>

4   <u>network, or device containing a computer processor to interpret, produce,</u>

5   <u>calculate, generate, or account for a date that is compatible with the year</u>

6   <u>2000 date change if the political subdivision has made a good-faith effort to</u>

7   <u>make the computer hardware or software, telecommunications network, or</u>

8   <u>device containing a computer processor compliant with the year 2000 date</u>

9   <u>change. For the purposes of this subdivision, a political subdivision is</u>

10   <u>presumed to have made a good-faith effort to make the computer hardware or</u>

11   <u>software, telecommunications networks, or devices containing a computer</u>

12   <u>processor compliant with the year 2000 date change if it has attempted</u>

13   <u>compliance through independent testing or assurances sought or assurances</u>

14   <u>received from manufacturers or suppliers. For the purposes of this section,</u>

15   <u>computer hardware or software, telecommunications networks or devices</u>

16   <u>containing a computer processor are compliant with the year 2000 date</u>

17   <u>change if:</u>

18   <u>(1)</u>   <u>All stored dates or programs contain century recognition, including</u>

19   <u>dates stored in data bases and hardware or internal system dates in</u>

20   <u>devices;</u>

21   <u>(2)</u>   <u>The program logic accommodates same century and multicentury</u>

22   <u>formulas and date values; and</u>

23   <u>(3)</u>   <u>The year 2000 or any other leap year is correctly treated as a leap year</u>

24   <u>within all program logic.</u>

25   This subsection does not limit the liability of a political subdivision or an employee

26   thereof for a personal injury arising out of the execution of any legislative or

27   quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

28   **SECTION 3. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997

29 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30   3.   Neither the state nor a state employee may be held liable under this chapter for

31   any of the following claims:

1   a.   A claim based upon an act or omission of a state employee exercising due

2   care in the execution of a valid or invalid statute or rule.

3   b.   A claim based upon a decision to exercise or perform or a failure to exercise

4   or perform a discretionary function or duty on the part of the state or its

5   employees, regardless of whether the discretion involved is abused or

6   whether the statute, order, rule, or resolution under which the discretionary

7   function or duty is performed is valid or invalid. Discretionary acts include

8   acts, errors, or omissions in the design of any public project but do not include

9   the drafting of plans and specifications that are provided to a contractor to

10   construct a public project.

11   c.   A claim resulting from the decision to undertake or the refusal to undertake

12   any legislative or quasi-legislative act, including the decision to adopt or the

13   refusal to adopt any statute, order, rule, or resolution.

14   d.   A claim resulting from a decision to undertake or a refusal to undertake any

15   judicial or quasi-judicial act, including a decision to grant, to grant with

16   conditions, to refuse to grant, or to revoke any license, permit, order, or other

17   administrative approval or denial.

18   e.   A claim resulting from the assessment and collection of taxes.

19   f.   A claim resulting from snow or ice conditions, water, or debris on a highway

20   or on a public sidewalk that does not abut a state-owned building or parking

21   lot, except when the condition is affirmatively caused by the negligent act of a

22   state employee.

23   g.   A claim resulting from any injury caused by a wild animal in its natural state.

24   h.   A claim resulting from the condition of unimproved real property owned or

25   leased by the state.

26   i.   A claim resulting from the loss of benefits or compensation due under a

27   program of public assistance.

28   j.   A claim resulting from the reasonable care and treatment, or lack of care and

29   treatment, of a person at a state institution where reasonable use of available

30   appropriations has been made to provide care.

1   k.   A claim resulting from damage to the property of a patient or inmate of a state

2   institution.

3   l.   A claim resulting from any injury to a resident or an inmate of a state

4   institution if the injury is caused by another resident or inmate of that

5   institution.

6   m.   A claim resulting from environmental contamination, except to the extent that

7   federal environmental law permits the claim.

8   n.   A claim resulting from a natural disaster, an act of God, a military action, or an

9   act or omission taken as part of a disaster relief effort.

10   o.   A claim for damage to property owned by the state.

11   p.   A claim for liability assumed under contract, except this exclusion does not

12   apply to liability arising from a state employee's operation of a rental vehicle if

13   the vehicle is rented for a period of thirty days or less and the loss is not

14   covered by the state employee's personal insurance or by the vehicle rental

15   company.

16   q.   A claim resulting from the failure of any computer hardware or software,

17   telecommunications network, or device containing a computer processor to

18   interpret, produce, calculate, generate, or account for a date that is

19   compatible with the year 2000 date change if the state has made a good-faith

20   effort to make the computer hardware or software, telecommunications

21   network, or device containing a computer processor compliant with the year

22   2000 date change. For the purposes of this subdivision, the state is

23   presumed to have made a good-faith effort to make the computer hardware or

24   software, telecommunications networks, or devices containing a computer

25   processor compliant with the year 2000 date change if it has attempted

26   compliance through independent testing or assurances sought or assurances

27   received from manufacturers or suppliers. For the purposes of this section,

28   computer hardware or software, telecommunications networks or devices

29   containing a computer processor are compliant with the year 2000 date

30   change if:

1   (1)   All stored dates or programs contain century recognition, including

2   dates stored in data bases and hardware or internal system dates in

3   devices;

4   (2)   The program logic accommodates same century and multicentury

5   formulas and date values; and

6   (3)   The year 2000 or any other leap year is correctly treated as a leap year

7   within all program logic.

8   **SECTION 4.** A new section to chapter 44-04 of the North Dakota Century Code is

9   created and enacted as follows:

10   **Year 2000 information requests - Use - Exceptions.**

11   1.   Any public entity may gather year 2000 processing information from any person

12   which relates to computer hardware or software, telecommunications networks, or

13   devices containing a computer processor. An information request under this

14   section may specify the person to gather responses to the request. Any year 2000

15   processing response made to an information gathering request from a public entity

16   is not a public record under section 44-04-18 or section 6 of article XI of the

17   Constitution of North Dakota and the response may not be directly or indirectly

18   used, offered in evidence, or be subject to discovery in any civil action for

19   damages in tort, contract, or for any other form of relief against the public entity or

20   person.

21   2.   This section does not preclude the public entity from using its requests for year

22   2000 information or responses to year 2000 information requests as evidence of a

23   good-faith effort to determine year 2000 compliance of its computer hardware or

24   software, telecommunications networks, or devices containing a computer

25   processor.

26   3.   In this section, year 2000 processing includes the calculating, comparing,

27   sequencing, displaying, or storing; transmitting; or receiving data from, into, and

28   between the twentieth and twenty-first centuries, and during the years 1999 and

29   2000, and any leap year.

30   4.   This section does not preclude any party from separately obtaining the information

31   submitted in response to a year 2000 information request made under this section

1   through other independent legal authority and using the separately obtained

2   information in any action.

3   5.   This section does not apply to any information disclosed to the public with the

4   express written consent of the party responding to a year 2000 information request

5   under this section or disclosed by that party separately from a response to a year

6   2000 information request under this section.

7   6.   This section applies to all responses to any year 2000 information requests

8   received by a public entity whether the response was received before or after the

9   effective date of this Act.